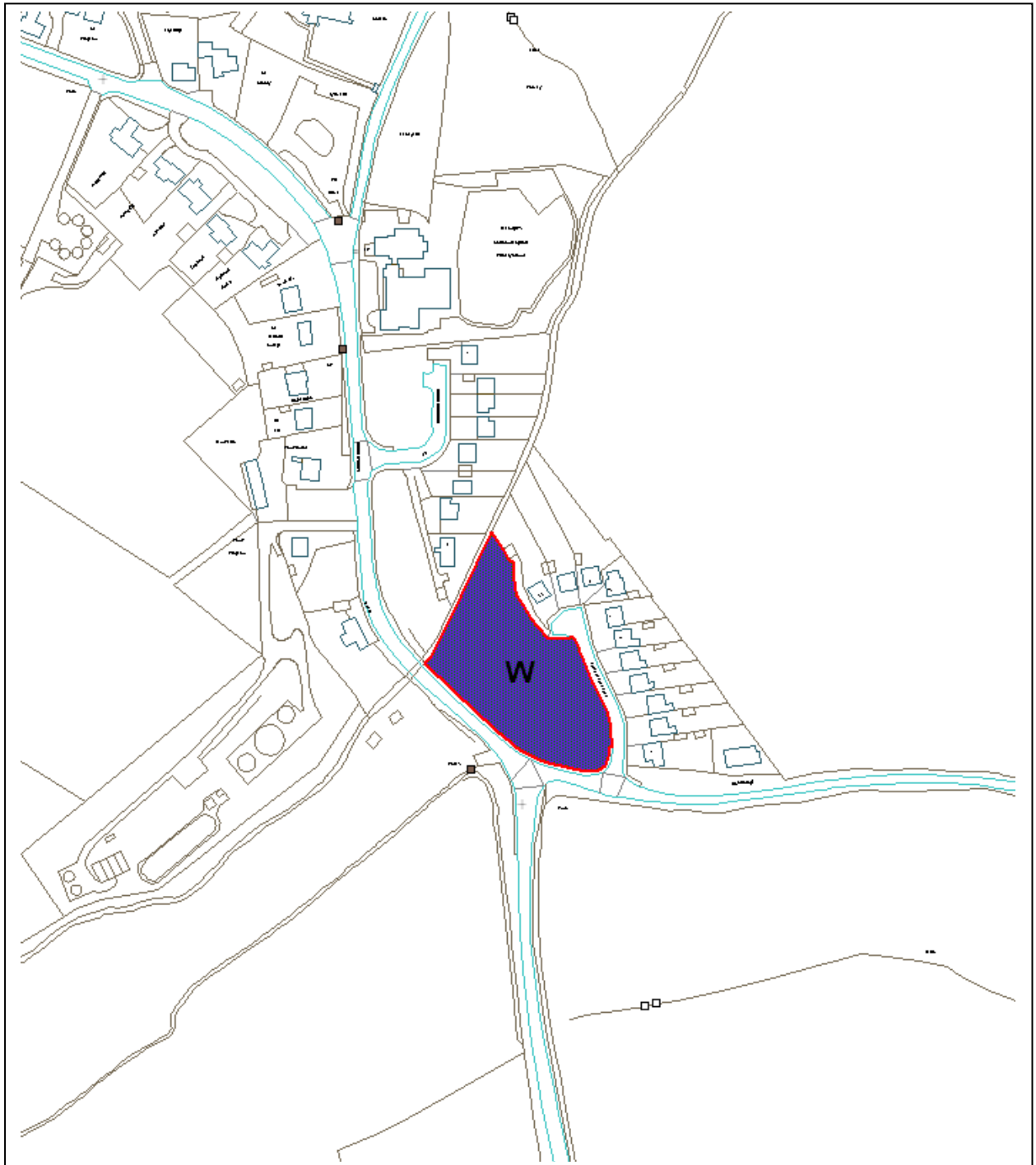


PLANNING COMMITTEE

3RD DECEMBER 2013

REPORT OF THE HEAD OF PLANNING

A.1 PROVISIONAL TREE PRESERVATION ORDER - 13/00014/TPO - LAND OFF SPRINGHILL CLOSE, GREAT BROMLEY, CO7 7HU



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Application:	13/00014/TPO	Town / Parish: Great Bromley Parish Council
Address:	Land of Springhill Close, Great Bromley, CO7 7HU	
Development:	W1 - comprising mainly Oak, Ash, Willow, Sycamore and Field Maple.	

1.0 PURPOSE OF THE REPORT

- 1.1 To determine whether the provisional Tree Preservation Order, made in respect of woodland on land off Springhill Close, Great Bromley, should be confirmed, confirmed in a modified form or allowed to lapse.

2.0 BACKGROUND

- 2.1 On 28 May 2013 planning application 13/00577/FUL was made valid for the land on which the trees are situated. The development proposal was described as: *Erection of 4 no. 3 bedroom properties, 2 car parking spaces per property plus new access road - together with the provision of an Ecological Enhancement Area.* On 6 June a site visit and inspection of the land was carried out to consider the impact of the proposal on the character and appearance of the area and to determine whether or not any trees on the land merited protection by means of a Tree Preservation Order (TPO). On 17 June 2013 a new TPO was served that afforded protection to the whole area as woodland.
- 2.2 On 30 July 2013 the planning application was refused. The reasons for refusal included the impact on the protected trees along with other issues relating to: flood zone, impact on visual amenity, biodiversity, design and the failure to provide a Unilateral Undertaking (UU).

3.0 SITE ASSESSMENT AND AMENITY VALUE

- 3.1 The purpose of the site visit made on 6 June 2013 was to carry out an assessment of the amenity value of trees situated on the land off Springhill Close, Great Bromley. The land is situated adjacent to the main road B1029 (Brook Street) to the south west and by Springhill Close to the north east.
- 3.2 The site is well populated with a wide range of tree species consisting primarily of Oak, Ash, Weeping Willow, Hawthorn and Sycamore. Other significant trees including Scots Pine, Goat Willow and Field Maple are situated on the land. There are a few garden escapees such as Tortured Willow, Rhus, Ribes and Euonymus.
- 3.3 The average canopy height is approximately 6m and the area has a natural woodland appearance. It is estimated that the trees are in the region of 40 years old. They feature prominently in the landscape and currently make a positive contribution to the appearance of the area. The site has considerable potential for its amenity value to increase as the trees on the land continue to mature. They also act as a valuable screen and acoustic buffer between the highway and the residential properties in Springhill Close.
- 3.4 The woodland understory comprises mainly bramble and nettles and the wetter part of the land supports small patches of Common Rush and Flag Iris. There are also isolated Honeysuckle and Dog Rose. Ornamental Dead Nettle has colonised a small area off Springhill Close.

- 3.5 In terms of its character the wooded area is not considered to be traditional or historic however in essence the area of land performs all of the functions of traditional woodland. The value of the woodland is not diminished or significantly affected, because the tree species contained are more varied. There are one two small glades that are also typical features of a woodland.
- 3.6 There is evidence of natural regeneration in the woodland. As the Hawthorn, Field Maple, Oak and Ash spread by seed and increase in size there will be increased opportunities for native understory species to become established.
- 3.7 When entering Gt. Bromley from the south the woodland makes a positive contribution to the appearance of the area and to the rural character of the area.
- 3.8 The land on which the woodland is situated is identified in the Council's Adopted Local Plan as a Safeguarded Local Green Space and as such it is clear that this area of land is identified for retention in its current, or something close to its current, natural form.
- 3.9 The trees on the land have high visual amenity value and the woodland is considered to be viable in the long term. As the development proposal compromises the integrity of the woodland as a whole it was considered appropriate to make a new Tree Preservation Order in order to ensure that the trees on the land are retained.

4.0 REPRESENTATIONS/OBJECTIONS

- 4.1 Following notification of the making of the Order to the owner of the property and adjacent properties, one letter of representation objecting to the Tree Preservation Order has been received.
- 4.2 The objection, made by Coward and Collins Planning and Development Consultancy – the planning agents acting on behalf of the landowner, must be fully considered to determine whether or not to confirm the Order.
- 4.3 A summary the objection is as follows:
- 1. The reasons for making the Tree Preservation Order are unclear. The letter sent by The Council on 27th June 2013 states that "The Council has made the order because it is considered that the trees make a significant contribution to the public amenity". However the letter sent by The Council on 2nd July 2013 states that " The purpose of the TPO is to give formal legal protection to the trees on the land that were put at risk by the current development proposal"*

Consequently the basis for the draft order is unclear and forms the first part of the objection.
 - 2. The planning agent makes the point that they have been involved in pre-application discussions with the Council and that the tree issue had not previously been raised. They also say that prior to the making of the TPO the owner of the land could have lawfully felled all the trees on the land. They state that they retained the trees so not to be perceived as "vandals" or "aggressive developers" but that, as a consequence of the TPO in future they would advise that trees are felled prior to development.*
 - 3. It is their view that the woodland definition is not realistic in their case – woodland is typically managed and coppiced and the application site in no way comparable*

to the native woodland which characterises parts of Essex. It is their view that examples of woodlands would be managed to produce a different wood crop or allow grazing within the woodland.

- 4. There is not a lot of regeneration and there has been no management in place to create woodland. They believe that the land has been colonised with shrub species (and some naturally regenerated Oak and Ash trees). That there is no cohesion to the land in terms of management or species mix and Weeping Willows and Pine are not species that would normally be found in southern lowland woodland.*
- 5. None of the trees on the land have any great age, other than the Willow which suggests that the land has only recently been colonised (perhaps 30-40 years). The site was probably field or open scrub with some planted Weeping Willow trees. The description of the open areas as "glades" is not considered reasonable as these are open areas used for dumping garden rubbish.*
- 6. The planning agent says that Great Bromley is blessed with a significant number of trees both within its confines and also within its general environs and questions why this area has been selected beyond other sites in the local area. It is their view that there is nothing special about this group of self-seeded trees to warrant protection on the basis of them making a significant contribution towards public amenity.*
- 7. In conclusion they say that the draft order is an attempt to justify the unjustifiable and is seeking to justify a woodland where no woodland exists or has ever intended to exist.*

The planning agent goes on in their letter to address issues relating to the consultation response made by the Tree and Landscape Officer in relation to the Planning Application 13/00577/FUL referred to in section 2 of this report. These issues do not fall within the scope of the decision making process whether or not to confirm the TPO and have therefore not been addressed in this report.

4.4 To address the objections a further site visit was arranged with the owners of Willow House which occurred on the 1 November 2013. The response to each point above is as follows:

1. With regard to the basis for making the TPO the two statements made by The Council relate to the primary reason for, and purpose of, making a new TPO. Firstly the trees must have high amenity value by way of being in a prominent location and being seen and enjoyed by the public. Secondly, TPO's should only be made if it is expedient to do so. As the development proposal threatened the removal of some of the trees the new TPO was made to secure their retention. In essence this is the basis for making any new TPO.
2. The pre-application response by the Planning Officer stated that "*the site's designation as a Safeguarded Local Green Space presents a fundamental issue for development. Tendring District Local Plan (TDLP) (2012) Policy PEO19 states that "The district's existing network of green infrastructure and local green spaces will be maintained, enhanced and protected against redevelopment. Development proposals that would prejudice the use or lead to the loss of any area shown as Local Green Space or Proposed Green Infrastructure on the Policies Maps or Policies Map Insets will not be permitted". As such, any proposal for this site would be refused.*"

Whilst the response by the planning officer did not mention the trees on the land it gave a clear indication of the importance of the site as part of the green infrastructure. It would be logical to recognise the part any trees or other vegetation on the land plays in the importance of this land.

The issue relating to the approach that the landowner and their agent has taken and the way that their future mode of operation may be affected by the decision whether or not to confirm the TPO is not relevant to this process. The Council has a duty to consider trees in the development process and the power to make TPO's where it is considered necessary.

3. The use of the 'woodland' category of protection is considered appropriate. The Oxford English Dictionary definition of woodland is '*Land covered with wood i.e. trees, a wooded region or piece of ground*' the definition accurately describes the land that is the subject of this report. Whilst it is their view that woodlands should be managed to produce a crop many woodlands are not managed in such a way but continue to make a positive contribution to amenity as well as providing other benefits such as quiet recreation and wildlife habitat.
4. It is clear that the woodland is showing signs of natural regeneration and the owners recognise that Oak and Ash has regrown naturally. Their comment that shrub species has colonised is reasonable and it is noted above that some herbaceous species such as Dead Nettle is present. Nevertheless the area of land has a 'wooded feel' and performs many of the functions of a more traditional wood. In terms of its amenity value it meets the criteria under which it merits protection.
5. In terms of the age of the trees this is not a factor that needs to be taken into account when assessing trees to ascertain whether or not they should be protected. In the Secretary of State's view TPO's should be made to protect trees if their removal would have a significant impact on the local environment and its enjoyment by the public. The size of the trees is such that they feature prominently in the local street scene.

The use of the term 'glades' was not intended to imply that the woodland was something greater than it actually is rather to demonstrate that there were one or two areas that were not densely populated with trees

6. In response to the statements that there is 'nothing special about this group of self-seeded trees' and the question 'why this area of land has been selected above other sites in the local area?' it is simply the case that the implementation of the planning application, made in respect of this land, would have resulted in the removal of some of the trees and significantly altered the character of the area. Therefore the new TPO was made on the grounds that the removal of trees would have had an adverse impact on the amenity of the locality.
7. Primary legislation enables the Council to make TPO's for trees, groups of trees areas of trees or woodlands but does not provide a definition of either trees or woodland. Whilst judicial decision has resulted in a definition for 'a tree' it has not resulted in a definition for woodland. In his book 'The Law of Trees, Forests and Hedgerows' the barrister Charles Mynors says that 'it seems therefore that there is no reason to depart from the ordinary dictionary definition – "Land covered with trees".'

The area of land is covered in trees therefore meeting the everyday dictionary definition of woodland. The use of this category is not, in any way, intended to be disingenuous.

5.0 CONCLUSIONS

- 5.1 There is a statutory duty on local planning authorities, set out in Part 8 of The Town and Country Planning Act 1990, in the interests of public amenity to make provision for the protection of trees.
- 5.2 The woodland has considerable amenity value to the locality. The removal of all or part of the woodland would have a significant detrimental impact on the local environment and its enjoyment by the public.
- 5.3 Following consideration of the representations made by the agent acting on behalf of the owner of the land it is felt there is no substantive reason why the order should not be confirmed.

6.0 RECOMMENDATIONS

- 6.1 That Tree Preservation Order 13/14 is confirmed without modification.

Background Papers

None.